

IN THE SUPREME COURT OF THE STATE OF DELAWARE

BEN ROTEN,	§
	§
Defendant Below-	§ No. 261, 2012
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Sussex County
	§ Cr. ID 0907011738
Plaintiff Below-	§
Appellee.	§

Submitted: June 25, 2012

Decided: July 30, 2012

Before **STEELE**, Chief Justice, **HOLLAND**, and **RIDGELY**, Justices.

**ORDER**

This 30<sup>th</sup> day of July 2012, upon consideration of the appellant's opening brief, the State's motion to affirm, and the record below, it appears to the Court that:

(1) The appellant, Ben Roten, filed this appeal from the Superior Court's denial of his motion for correction of illegal sentence and motion for new trial. The State has filed a motion to affirm the judgment below on the ground that it is manifest on the face of Roten's opening brief that his appeal is without merit. We agree and affirm.

(2) The record reflects that a Superior Court jury convicted Roten in January 2010 of one count of Assault in a Detention Facility. The

Superior Court sentenced Roten as a habitual offender to twenty-five years at Level V incarceration to be followed by six months at Level IV work release. On direct appeal, Roten argued, among other issues, that the State had failed to establish that Roten had the requisite prior convictions to qualify him as a habitual offender. This Court affirmed Roten's conviction and sentence on direct appeal.<sup>1</sup> Thereafter, Roten filed a motion for modification of sentence and a motion for postconviction relief, both of which the Superior Court denied. This Court affirmed the denial of postconviction relief on appeal.<sup>2</sup> Roten then filed a motion for correction of illegal sentence, which the Superior Court denied. This appeal followed.

(3) Roten raises three issues in his opening brief on appeal.<sup>3</sup> First, he contends that his sentencing as a habitual offender is illegal because it was based on false and unreliable information. Second, he argues that his prior convictions are not predicate felonies under the habitual offender statute. Finally, he asserts that he never had an opportunity to rehabilitate.

(4) A motion for correction of an illegal sentence under Rule 35(a) is very narrow in scope.<sup>4</sup> Rule 35(a) permits relief when “the sentence imposed exceeds the statutorily-authorized limits, [or] violates the Double

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<sup>1</sup> *Roten v. State*, 2010 WL 3860663 (Del. Oct. 4, 2010)

<sup>2</sup> *Roten v. State*, 2011 WL 5419684 (Del. Nov. 8, 2011).

<sup>3</sup> Roten's opening brief does not raise any issue about the Superior Court's denial of his motion for new trial. Accordingly, we deem any issues with respect to that ruling to be waived. *Murphy v. State*, 632 A.2d 1150, 1152 (Del. 1993).

<sup>4</sup> *Brittingham v. State*, 705 A.2d 577, 578 (Del. 1998).

Jeopardy Clause.”<sup>5</sup> In this case, Roten does not, and could not, argue that his sentence exceeds the legal limits or violates double jeopardy principles.<sup>6</sup> In fact, the substance of Roten’s argument is that the Superior Court erred in granting the State’s motion to declare him to be a habitual offender. Such an argument, however, is not properly raised through a Rule 35(a) motion.<sup>7</sup> Accordingly, we find no error in the Superior Court’s denial of the motion for correction of sentence.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is AFFIRMED.

BY THE COURT:

/s/ Myron T. Steele  
Chief Justice

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<sup>5</sup> *Id.* (quoting *United States v. Pavlico*, 961 F.2d 440, 443 (4<sup>th</sup> Cir. 1992)).

<sup>6</sup> The Superior Court sentenced Roten to 25 years at Level V incarceration followed by 6 months at Level VI work release. This sentence was the maximum sentence allowed by 11 Del. C. § 4205(b)(2) for Roten’s conviction of Assault in a Detention Facility pursuant to 11 Del. C. § 1254(b).

<sup>7</sup> *Brittingham v. State*, 705 A.2d at 578 (holding that the narrow function of a Rule 35(a) motion is to determine the legality of the sentence not to reexamine errors occurring in proceedings, including habitual offender hearings, prior to the imposition of sentence).